GENERAL AND PARTICULAR INTENT IN CONNECTION WITH THE RULE AGAINST PERPETUITIES.

A STATE Court of reputation has lately decided an important question of common law contrary to every previous case. The question has come up repeatedly in the English courts as well as in the courts of many of the United States, and has always been answered the other way. Yet the decision referred to is no careless or ignorant expression of opinion. It is a well considered judgment, written with full appreciation of the unbroken authority against it.

The case is Edgerly v. Barker, decided by the Supreme Court of New Hampshire in an opinion written by Chief Justice Doe, and to be published in the 66th volume of the New Hampshire Reports, pp. 434-475, with advanced sheets of which I have been favored. Such a decision is an unusual occurrence and deserves examination.

The case was this. Hiram Barker, a resident of New Hampshire, died, leaving a will and codicils which were duly proved. After sundry legacies, he gave the residue of his estate, real and personal, which was about $600,000, to trustees in trust to pay his daughter Clara $2,000 a year, and more if necessary for her comfortable support; to pay $1,000 a year, or more in the discretion of the trustees, to his son, Hiram H. Barker, for the support of himself and his family, if from his habits and mode of life he should prove himself safe and competent to have the use and expenditure of the money; if not, then the trustees to have the expenditure of the money for the same purpose; to furnish means for the education of all the son's children, including those born after the testator's death; if the son should "become and remain temperate, sober, and correct in his habits" for five years together, $5,000 to be paid to him, and at the end of ten years and of fifteen years further sums if he should remain "perfectly temperate and of good and regular habits"; and to pay to his son's wife, should she survive him, $500 a year or more at the trustees' discretion.

Then came the clause under which the question arose. It provided that the trustees should pay to each of said children of the

testator's son, when said child should reach twenty-one, and to each child of his said daughter, if she should have any, the sum of from $3,000 to $5,000, if such child should be temperate and of good capacity to manage the money, and from time to time thereafter, as the wants and necessities of the children should require, the trustees should pay out such further sums as might be necessary; and "when the youngest of said children shall arrive at the age of forty years, then all my estate shall be theirs, to have and to hold the same to them and their heirs, those of them of good and regular habits and of capacity to do business and manage property, to take care of and manage, as trustees, the portion or portions thereof belonging to those, if any, who are not then possessed of such habits and capacity; but before said property shall vest in and be theirs, proper, suitable, and sufficient bonds or other security must be given by them for the payment of said sum or sums to my said daughter, if living, so long as she shall live, to my said son's widow if she shall then be living, so long as she lives and remains his widow, and also for the good and sufficient support of my said son so long as he shall live."

The executors of the will brought a bill of interpleader against the testator's son and daughter, and against the trustees. The counsel for the trustees contended that the gift of the residue to the grandchildren was good; the son's counsel, that it was bad.

There were of course four questions: —

First. To whom was the residue given?

Second. Was the gift vested or contingent?

Third. If contingent, was it too remote?

Fourth. If too remote, what was the consequence?

The first two questions are questions of construction. The Chief Justice begins his opinion thus: "The construction of the will, including the question whether the testator intended the remainder, which he devised to his grandchildren, should vest in them before they became entitled to a distribution of it, is determined as a question of fact by competent evidence, and not by rules of law." This mode of expression is peculiar to the learned Court. Whether correct or not, it is unnecessary for the matter in hand to consider.

First. The first question the Chief Justice answers by saying that the residue is given to living grandchildren and the issue *per stirpes* of deceased grandchildren. This is a highly novel construction, but it is purely a matter of interpretation, and I do not dwell upon it.

Second. The Court assumes that the gift to the grandchildren is contingent. By including the issue of deceased grandchildren in the class of residuary legatees the Court does away with one of the chief arguments for calling the gift vested. Yet there is another circumstance that points strongly towards vesting, and that is the power given the trustees to make payments to the testator's grandchildren before the final distribution. This power might be, and probably would be, exercised to a very different extent with different grandchildren, and yet, if the final gift be contingent, no account can be taken of this.

I have no desire to criticise the conclusion, or rather the assumption of the Court, that the gift is contingent. On the contrary, if I may take the liberty of saying so, it seems to me correct. The only gift to the grandchildren is the gift to pay when the youngest reaches forty; this makes the gift *prima facie* contingent; and the circumstances fortifying this conclusion seem to be greater than those against it. Yet it should be borne in mind that the testator (as is not unfrequently the case) had wishes which are really inconsistent, and that his wishes that the interests should vest fail of effect only because more and weightier indications of intention are inconsistent with their vesting. I want to insist upon this, because, as I think will be apparent to the learned reader, the circumstances making in favor of the vesting of this gift rendered it easier for the Court to introduce its new theory into the law than it would have been in the case of an unquestionably contingent gift.

Third. The gift to the grandchildren then being contingent, is it too remote? Of this there can be no doubt. The gift is to them at forty, which is obviously beyond the period allowed by law.

Fourth. What then is the result? The answer which has always hitherto been made in like cases is, that the gift is void, and there is an intestacy. The Supreme Court of New Hampshire now says that the fund is to be distributed to the grandchildren when they reach twenty-one.

Until this case of Edgerly *v.* Barker the law, as held in every other jurisdiction where the common law prevails and the question has come up, is this. If a gift is made to a person or class as filling a particular character at a time which may be too remote, the court will not substitute therefor a gift to the person or class filling the character at a time within the limits. Thus, for a gift to such of the testator's grandchildren as reach twenty-five the court

will not substitute a gift to such of the grandchildren as reach twenty-one or some less age. It would be pedantic to multiply authorities for this statement. Half a dozen from England, the United States, Canada, and Australia will suffice.[1]

Indeed, the Supreme Court of New Hampshire does not suggest that there has ever been a decision or a judicial *dictum* of any kind denying or questioning the proposition above stated.

The Chief Justice's line of reasoning, as I understand it, is this:—

(1) It is conceded that there must be some restraint on the creation of future interests.

(2) There is no statute in New Hampshire on the subject.

(3) There is no decision of the New Hampshire Court on the subject.

(4) The Court therefore must adopt or make a rule.

(5) The Rule against Perpetuities as administered in England is later than the settlement of New Hampshire, and therefore the decisions of the English courts are not binding precedents in that State.

All these propositions are unquestionably correct.

The Court then goes on to lay down this rule. When there is a primary intention to make a gift to a class, and a secondary intention that the gift shall take effect at a period which may be too remote, the Court will give effect to the primary intention by substituting a gift to the class to take effect at a period which is within the limits.

The Court then refers to certain cases which, although not precisely in point, it deems to be analogous and to furnish a support to its conclusion.

Any comments on this novel doctrine of the New Hampshire Court fall naturally under four heads:—

I. The departure of the Court from the law held in other States.

II. The fallacy contained in the new doctrine.

III. An examination of the cases supposed to be analogous.

IV. The applications of the doctrine.

---

[1] Leake *v.* Robinson, 2 Mer. 363; Sears *v.* Putnam, 102 Mass. 5; Coggins's Appeal, 124 Pa. 10; Albert *v.* Albert, 68 Md. 352; Meyers *v.* Hamilton Co., 19 Ont. 358; Ker *v.* Hamilton, 6 Vict. L. R. Eq. 172.

I.

It is true that there is no precedent which the Court of New Hampshire has to regard as binding that compels it to follow the rulings elsewhere ; but I submit it is a serious thing deliberately to break away from the *consensus* of the English speaking world on this subject. True, the matter is not one of commercial intercourse, and therefore it is not so important that the law should be uniform upon it ; but persons often own land in States other than their own, and it is no slight evil that the laws governing the settlement and devolution of property should differ.

Again, I am no blind admirer of the Rule against Perpetuities, but it is a doctrine of purely judicial origin, and it has grown to fit the ordinary dealings of the community. It is, too, a well established, simple, and clear rule. There are indeed some few cases where the law is still unsettled, but they are largely on matters which will never come up in this country, such as the creation of long terms attendant upon estates tail. The process of adjudication has been a process of clearing and simplification, and the tendency of legislation, so far as it has touched the matter at all, has been to make the rule more stringent.

It is a dangerous thing to make such a radical change in a part of the law which is concatenated with almost mathematical precision. A striking instance is shown by the fate of New York. Before the year 1828, the forty or fifty volumes of the New York Reports disclose but one case involving a question of remoteness. In that year the reviewers (clever men they were, too) undertook to remodel the Rule against Perpetuities, and what a mess they made of it ! At my last count 249 cases have come before the New York courts under the statute as to remoteness,— an impressive warning on the danger of meddling with the subject.

II.

The doctrine of the New Hampshire Court in this case involves a fallacy. It speaks of a primary intent to give to persons and a secondary intent to give to them at a particular time, and it purports to preserve the primary intent while discarding the secondary intent by substituting another time. This assumes that the persons remain the same, and only the time is changed. But that is precisely what does not occur ; with the time, the persons are changed. Take the present case. The testator meant to give to

those of his grandchildren who reached forty; the Court gives the property to those of the grandchildren who reach twenty-one. There may be six grandchildren who reach twenty one, and only one who reaches forty. Here shares are given to five persons whom the testator never meant to have it. There may be some answer to this, but it is a real and a very serious objection, and deserves an answer, and it gets none from the New Hampshire Court. The case is dealt with throughout as if the only question were whether the same persons should get the property at forty or at twenty-one. As remarked above, the circumstances which tended to show an intention to make this gift vested probably obscured the fact from the Court that it was taking property devised to one set of people and giving it to another.

III.

Let us look now at the cases which seemed to the New Hampshire Court to furnish a treatment of legal situations analogous to that which it adopted in Edgerly *v.* Barker.

A. Under a power to lease for twenty-one years, a lease for forty years is good in equity for twenty-one years. This is true.[1] It is allowing a present vested interest to continue as long as a power permits. It has no similarity with changing the condition precedent on which a future interest is to vest so as to give it to those persons who happen to answer to a particular description at one time, instead of giving it to those persons who answer to it at another time.

We have here in fact an instance of that confusion of ideas which has been such a *fons malorum* in questions of remoteness. The Rule against Perpetuities is aimed against remote future contingent interests, and has nothing to do directly with the continuance of present interests. The failure to keep this clearly in view has led, and always will lead, to error.

B. "Under a statute restricting to a term not exceeding twenty-one years, the time for which a tenant for life can be empowered to lease, a testamentary gift to a tenant for life of a power to lease for sixty-three years is not void. If he makes a lease for more than twenty-one years it is void for the excess, and no more. Nelson, C. J., and Bronson and Cowen, JJ., in Root *v.* Stuyvesant, 18 Wend. 257, 273, 275, 277, 290, 291, 302, 306, 307, 313." Then

[1] Campbell *v.* Leach, Amb. 740, 745.

follow two long extracts from Nelson, C. J., and Cowen, J. Would one suppose from this that Nelson, C. J., and Bronson and Cowen, JJ., were the dissenters from the judgment of the Court of Errors affirming the decision of the Chancellor? Yet such is the fact.

The will in Root *v.* Stuyvesant was made before the statute, and at a time when terms for sixty-three years were good, (though brought within the purview of the statute by a subsequent republication,) and the Chancellor and the majority of the Court of Errors thought that the statutory inhibition of these terms so altered the scheme of the will as to avoid it altogether.

The particular proposition for which the opinions of the dissenting judges in Root *v.* Stuyvesant are cited, that an appointment under a power is not rendered bad by the fact that a bad appointment could be made under the power, is good law enough. Indeed, it is hard to imagine a power under which a bad appointment might not be made, e. g. a power to appoint to issue.

What the opinions of the dissenting judges are cited for is not entirely clear. If it is that the court can mould invalid provisions so as to make them good, it is enough to say that the opinion of the Chancellor and the majority of the Court of Errors is directly opposed to such a view.

C. The doctrine of *cypres* forms a recognized exception to the rule that construction is not affected by questions of remoteness. That doctrine is this. When land is devised to an unborn person for life, remainder to his children in tail, the unborn person takes an estate tail; so also when there is a series of successive life estates.

This doctrine was originally confined to executory trusts, where, of course, it was all well enough, but it has been extended to legal estates.

Now it should be observed that this doctrine has always been regarded with suspicion and disapproval by the ablest judges. Lord Kenyon was the first, in 1786,to extend it beyond the case of executory trusts, yet he himself, in Brudenell *v.* Elwes,[1] said: "The doctrine of *cypres* goes to the utmost verge of the law. . . . We must take care that it does not run wild. . . . I know that great judges entertained considerable scruples at the time concerning that decision. *It went indeed to the outside of the rules of construction.*" So Sir J. L. Knight Bruce, V. C., in Boughton *v.*

[1] 1 East, 442, 451 (1801).

James[1]: "The doctrine has gone, at least, far enough." So the Court of Exchequer in Monypenny *v.* Dering[2]: "Without meaning to say that the doctrine [of *cypres*] is satisfactory to our minds, it is sufficient for us to say that those authorities are not precisely in point, and we do not feel inclined to carry the doctrine on which they rest one step further." And, finally, in Brudenell *v.* Elwes,[3] Lord Eldon, C.: "Those cases have at least gone, as Lord Kenyon observes, to the utmost verge of the law; and I shall find it very difficult to alter an opinion I have taken up, that it is not proper to go one step farther; for in those cases, *in order to serve the general intent and the particular intent, they destroy both.*"

But the indispensable condition for the application of the doctrine of *cypres* is that the persons who take under it shall be *no others, no more and no fewer,* than those to whom the testator intended to give the estate. If the estate tail is suffered to continue undocked, then exactly the same persons will take under the doctrine of *cypres* that the testator intended to take, and it is this equivalence which satisfied the formalism of Lord Kenyon, while later judges of more enlarged mind have recognized that the power of docking the entail really changes the persons who can take, and this has made them regret the decision.

The doctrine of *cypres,* circumscribed as it has been, is in truth a strong argument against a change by the authority of the court from one set of persons to another set of persons.

D. It is strange that Chief Justice Doe has not brought forward a class of cases which furnish in truth a more plausible support to his views than any which he has given. If a testator devises his estate to his grandchildren in equal shares, and then directs that of the share of each granddaughter the income shall be paid to her for life and the principal conveyed to her children in fee, the gift to the children being bad for remoteness, the modification of the devise is rejected, and each granddaughter takes a fee. In such a case it may be said that there is a general intent and a particular intent, and that the latter is sacrificed to the former; but there is no change of devisees; to certain persons fees simple are given, and then those are cut down to life estates for a purpose; the purpose failing, the cut down is rejected by the court, and the fees simple revive, *but to the same persons. Again, the testator has himself distinguished and separated the general intent from*

[1] 1 Coll. 26, 44. [2] 16 M. & W. 418, 434. [3] 7 Ves. Jr., 382, 390.

the particular intent. When he has not done this, and the only gift is to granddaughters for life with remainders in fee, a granddaughter will only take a life estate; in order for a granddaughter to take the fee, there must be a distinct gift to her of the fee, and afterwards a separate modification. [1]

E. The history of the doctrine of general and particular intent in the law is well known. It was first introduced in Robinson *v.* Robinson, [2] in the attempt to explain the Rule in Shelley's Case as a rule of construction; it produced the hopeless tangle of decisions of which Lord Eldon has said, "The mind is overpowered by their multitude, and the subtlety of the distinctions between them"; and it was only when the doctrine of general and particular intent was repudiated, and it became firmly settled that the Rule in Shelley's Case was not a rule of construction, not a rule, however artificial, to discover intention, but a rule the object of which was to defeat intention, that any order was introduced into that chaos.

Thus Lord Redesdale, in Jesson *v.* Wright [3]: "To say that the general intent shall overrule the particular is not the most accurate expression of the principle of decision, but the rule is that technical words shall have their legal effect, unless from subsequent inconsistent words it is very clear that the testator meant otherwise." So Lord Denman, in Doe *v.* Gallini [4]: "The doctrine that the general intent must overrule the particular intent has been much and, we conceive, justly objected to of late, as being, as a general proposition, incorrect and vague, and likely to lead in its application to erroneous results." [5] The doctrine "is now exploded." [6] In the fourth edition of Jarman on Wills [7] is an elaborate discussion, proving the futility of the doctrine; but in the fifth edition [8] the doctrine is dealt with as now obsolete, and only a short note inserted.

This piece of legal history is full of instruction. The Rule in Shelley's Case is not a rule for interpretation, it is a rule the object of which is to defeat intention. Courts struggled to deal with it as a rule of construction, and instead of saying that the testator meant so and so, but the Rule forbade this intention being carried out, they strove to divide the testator's intention into two parts, one part which agreed with the Rule, and which they called

---

[1] Whitehead *v.* Rennett, 22 L. J. Ch. 1020.
[2] Burr. 38.
[3] 2 Bligh, 1.
[4] 5 B. & Ad. 621, 640.
[5] See Hayes's Principles, pp. 44, 110.
[6] Tud. L. C. on R. P. (3d ed.) 618.
[7] Vol. ii. p. 484.
[8] Vol. ii. p. 1312, n.

the general intent, and another part which could not be made to square with the Rule, and which they called the particular intent, and they sacrificed the latter to the former, and said they were carrying out the general intent, when in truth both general and particular intent alike were defeated by the Rule. The consequence was an unspeakable quagmire, of which no one can have a notion who has not ventured into it, and out of which escape was finally had only by the total repudiation of the theory of general and particular intent, and by a firm grasp on the principle that the object of the Rule is to defeat intention.

The Rule against Perpetuities is, in like manner, a positive rule intended to defeat intention. To quote from the case of Dungannon *v.* Smith[1]: "The existence of the Rule as to Perpetuities is certainly no reason for altering the construction of the bequest." Per Maule, J. "Our first duty is to construe the will; and this we must do, exactly in the same way as if the Rule against Perpetuities had never been established, or were repealed when the will was made; not varying the construction in order to avoid the effect of that rule, but interpreting the words of the testator wholly without reference to it." Per Parke, B.

That is not what the Supreme Court of New Hampshire has done in Edgerly *v.* Barker; instead of saying the testator meant a gift to those persons who were his grandchildren and their issue, when the youngest living grandchild reached forty, and then applying the rule, finding the gift was beyond the limits and cutting it off, the Court has striven to divide the testator's intention into two parts, part which is consistent with the Rule, and which they call the general intent, and part which will not square with the Rule, and which they call the particular intent, and then has proceeded to sacrifice the latter to the former, when in truth it has been substituting a new intent, and giving the property to a set of persons different from those to whom the testator gave it.[2]

---

[1] 12 Cl. & F. 546.

[2] The argument upon which the learned counsel for the trustees chiefly relied was that the English Commissioners on the Law of Real Property, in their Third Report, had recommended the passage of a statute which should provide, among other matters, as follows: —

"19. Where a future estate or interest shall be limited to vest on the event of a person, not born nor *en ventre sa mère* at the creation of such future estate or interest, attaining or not attaining an age greater than twenty-one, the settlor or testator shall be deemed to intend the age of twenty-one.

"20. Where an estate or interest shall be made determinable either by the original

Legal history, like other history, repeats itself; here is the Supreme Court of New Hampshire taking the first step in that chase after the will o' the wisp of general and particular intent which the Court of King's Bench began more than a hundred years ago, and which, after long wanderings and stumblings and groanings of spirit, it has now finally abandoned.

---

limitation thereof, or by virtue of any proviso, condition, or agreement upon the event of a person, not born nor *en ventre sa mère* at the creation of such future estate or interest, attaining or not attaining an age greater than twenty-one, the settlor or testator shall be deemed to intend the age of twenty-one."

But upon this argument it is to be remarked:—

1. That this statute was not recommended by the Commissioners as declaratory of the common law, but as an innovation.

2. That while so many of the recommendations of the Commissioners were adopted by Parliament, this never has been.

3. That other changes in the common law recommended by the Commissioners, and at least as beneficial, have never been adopted in New Hampshire. For instance, the rule in question is mercy and wisdom combined compared with the rule which requires a freehold to support a contingent remainder, and yet this last has been upheld in New Hampshire with uncalled for severity.

4. That the Commissioners, feeling the great danger of tampering with the content of the doctrine of remoteness, or of attempting to distinguish between primary and secondary intent, made an arbitrary rule that when a testator says $21 + x$ years, he shall be conclusively presumed to mean twenty-one years, and that this is a pretty strong thing even for a statute.

5. That the case of a contingent gift to a shifting class, such as arose under the Barker will, was not within the purview of the contemplated provisions. These provisions were intended to deal with individuals, not with changing classes; the estate dealt with is one limited to vest, not on a *class*, but on a *person* reaching or not reaching a certain age. The cases in the minds of the Commissioners were of a nature like this: "To A. for life, remainder to his eldest son in fee, but if he should die before he reaches twenty-five without leaving issue living at his death, to A.'s second son in fee, but if such second son should die before he reaches twenty-five without, &c., then to A.'s third son," &c. The Commissioners intended to provide that if a gift to A. was followed, on a contingency which might not occur until $21 + x$ years, by a gift to B., 21 should be substituted for $21 + x$, but they did not intend that C. should be substituted for B., which is precisely what the New Hampshire Court has done.

It is very noticeable that in their report the Commissioners say: "Sometimes a limitation is made to depend on the event of unborn persons attaining or not attaining some age greater than twenty-one"; but when they come to sum up their conclusions in the exact language of a proposed statute, seeing perhaps a possible danger of misconstruction, they change the plural into the singular, showing that they mean to deal with an individual and not with a changing class. In other words, the Commissioners obviously had in mind the advancing of the time for a legacy to A. so as to enable A. to take; but there is no evidence, either in the Report or in the Propositions, that they ever contemplated applying the method so as to take property given to one set of legatees and transfer it to another. To do that has been reserved to the Supreme Court of New Hampshire.

IV.

Applications of the New Hampshire Doctrine.

A. Take first the present case. Here was a gift to grandchildren when they reached forty, the Court cut it down to grandchildren when they reached twenty-one, but why take that date? Why not give it to the grandchildren at once, without waiting till they reach twenty-one? The only answer would seem to be, "Although we cannot put off the period of distribution as late as the testator wished, we will put it off as long as we can." But that the court has not done. Why not order the fund to be distributed among those grandchildren who are living at the end of twenty-one years from the death of both children? Or, better still, why not make the time of selection to be twenty-one years after the death of both the testator's children and of all his grandchildren living at his death? Or, again, why not make it twenty-one years after the death of all the students now at Dartmouth College? What can be said of the time selected by the Court, more than for any or all these?

B. Or if there be special circumstances in this case pointing to twenty-one, how about a case where there are no such special circumstances?

C. Again, (what the devise might easily have been in this case,) to such of the testator's grandchildren when the youngest reaches forty as are then of temperate habits. Would a gift to such of the grandchildren as were not drunkards at twenty-one satisfy the general intent of the testator?

D. A gift to A., a young infant, for life, after his death to any widow he may leave for life, and on the death of such widow to such of his children as are then living. Is this time to be cut down, and if so, to what period must survivorship be referred? The death of the husband? Twenty-one years after the death of the husband? The death of any wife born in the testator's lifetime? Twenty-one years after the death of any wife born in the testator's lifetime?

E. To a church for a parsonage, but, whenever it is no longer used as a parsonage, then to A. and his heirs. Here is a general intent to have the property go over; under certain circumstances this can be done, under other circumstances it cannot; why not carry out that general intent under the former circumstances, if

it cannot be under the latter? Why not allow it if the parsonage is given up within twenty-one years after the testator's death? Or within twenty-one years after the death of all the present members of the First Regiment of New Hampshire Militia?

F. To the person who shall be Chief Justice of New Hampshire fifty years from to-day. Is Chief Justice Doe entitled to that gift? Is the Chief Justice who shall be in office twenty-one years from now entitled? Or shall the Chief Justice who attends the funeral of the last member of the New Hampshire bar now living take it?

Here are cases, not recondite cases, but such as occur to one *currente calamo*. They could be multiplied indefinitely. Outside of New Hampshire not merely would these cases present no difficulty to the courts, but any decently instructed lawyer could answer any of them promptly and with certainty. In New Hampshire, the more learned and acute the lawyer, the greater the perplexity in which such cases would plunge him.

In fact, this novel doctrine substitutes for the set of devisees named by the testator another set selected out of an infinite number by the *arbitrium* of the Court.

John Chipman Gray.

NOTE.—I had the honor of being consulted by the learned counsel for the testator's son on the question whether the gift to the grandchildren under Mr. Barker's will was vested or contingent, and I came to the conclusion that it was contingent, and so advised. I assumed that the question of remoteness would be decided as it had been everywhere else, and that therefore the only real point in issue was the vesting or contingency of the gift.

I fully recognize the value of the traditional practice, that counsel should take their licking quietly, and not let their dissatisfaction go beyond oral grumbling; but on the point upon which I advised, the Court was with me, and on the matter here discussed, the view adopted by the Court was one which had never seemed possible to me, and to which I had not given any consideration. Besides, in any new edition of my book on the Rule against Perpetuities, I must deal with the subject, and therefore it seems better to speak of it while it is fresh.